

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 1999-304

May 18, 1999

TIM MAYBERRY  
Appeal of Consumer Assistance  
Division Decision #1998-6269  
Regarding AT&T Communications  
Of New England, Inc.

ORDER DISMISSING  
APPEAL

WELCH, Chairman; NUGENT, and DIAMOND Commissioners

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**I. SUMMARY**

In this Order we uphold the Consumer Assistance Division (CAD) decision concerning a complaint about a change in service provider filed by Mr. Tim Mayberry against AT&T.

**II. BACKGROUND**

In November 1998, Mr. Mayberry received a bill from AT&T in the amount of \$71.17 for in-state long distance service from October 17 through November 3, 1998. Mr. Mayberry then called AT&T and claimed he had never authorized AT&T as his in-state long distance carrier. The AT&T representative looked at Mr. Mayberry's records and told him there was no record of his authorizing a change and that he had been slammed by AT&T. AT&T rebilled the customer at Bell Atlantic's rates, an adjustment of \$56.97, and offered a \$10 certificate to cover switching costs. AT&T also switched his service back to Bell Atlantic. Mr. Mayberry filed a complaint with CAD about the slamming on November 19, 1999.

After investigating the complaint, CAD found that AT&T records showed an individual called on behalf of Mr. Mayberry on October 14, 1998 and asked that his interstate and intrastate service be changed to AT&T. This was shortly after Mr. Mayberry requested that Bell Atlantic change his residential account to a business account on October 5, 1998. At AT&T's request, Bell Atlantic switched his instate long-distance service to AT&T on October 16, 1999, on the line that was now a business account. When Mr. Mayberry called AT&T to complain about his instate long distance bill, the AT&T representative apparently incorrectly informed him that there was no record of his account being with AT&T. This confusion likely arose from the AT&T representative looking at residential records rather than business records.

CAD decided that AT&T had not improperly switched the account, based on the fact that a representative of the customer called AT&T and requested the switch. CAD further found that AT&T offered the customer the same remedy it would have, had he been slammed. Mr. Mayberry appealed CAD's decision to the Commission on May 3, 1999. He disagrees with CAD's finding that he was not slammed.

### **III. DECISION**

After reviewing the record and appeal, we uphold CAD's decision and decline to investigate this matter further. Although there was confusion on AT&T's part, its records support that a change was requested in October 1998. Mr. Mayberry does not dispute that the person named by AT&T may have called on his behalf, but he does not believe she authorized the switch. As the person is no longer living, there is no way to verify what she told AT&T beyond the information in its records.

35-A M.R.S.A. § 7106 contains the requirements and restrictions for changing a customer's local or intrastate interexchange carrier. Because a representative of Mr. Mayberry initiated the requested change, there was no unauthorized customer change as defined in the statute. If there had been an unauthorized change, the unauthorized carrier must pay any charges associated with returning the customer to the customer's original carrier, return to the customer any amount paid to the carrier and pay any applicable charges to the underlying carrier. Although it did not violate this section, AT&T financially placed Mr. Mayberry in the same position as if it had violated this section and complied with its remedial requirements.

The Commission may also impose administrative penalties for violations. In levying a penalty, the Commission must determine the severity of the violation, including the intent of the violator and any previous violations. The CAD decision incorrectly states that the slamming law requires proof that slamming was intentional. There is no such requirement in 35-A M.R.S.A. § 7106. Nonetheless, we do not believe that the situation presented here was slamming; instead, at most, it may reflect inadequate record keeping and training of AT&T's customer service representative.

When our currently proposed slamming rule (Chapter 296) goes into effect, it will require verification for all customer-initiated carrier changes. This will help avoid situations such as this one, where there was confusion about whether the customer or his representative actually authorized a change. Because AT&T returned Mr. Mayberry to the same position he would be in if the change had not occurred, we decline to investigate this matter further and uphold CAD's decision.

Dated at Augusta, Maine this 18th day of May, 1999.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:      Welch  
   Nugent  
   Diamond

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

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